KAU NIA ENTERPRISE (PTE.) LTD. v. TECK WAH CORPORATION (PTE.) LTD.

[O.C.J. (Lai Kew Chai J.) July 24, 1981]
[Singapore — Civil Suit No. 1332 of 1981]

Contract — Specific performance — Option to purchase — Option not exercised in mode prescribed — Waiver of terms — Acceptance of altered mode — Binding contract.

Land Law — Sale agreement — Specific performance — Option to purchase — Option not exercised in mode prescribed — Acceptance of altered mode — Binding contract.

Practice and Procedure — Specific performance — Discretion — Scope of R.S.C., 1970, O. 81 r. 1.

On June 10, 1980, by a written option, the defendants for the sum of $5,000 gave the plaintiffs an option to purchase the property with vacant possession and at the price of $720,000. Completion of the sale and purchase was to take place on November 10, 1980. The option was exercisable at or before 4 p.m. on July 30, 1980. The mode of acceptance was prescribed. The plaintiffs had to sign at the foot of the option at the portion entitled "Acceptance Copy" and deliver it duly signed together with the balance of 10% of the purchase price at or before the said time.

The plaintiffs did not exercise the option in the mode prescribed. Instead, they handed to the defendants and the defendants accepted 2 cheques aggregating the sum of $67,000 which together with the option fee amounted to 10% of the purchase price. The defendants wrote a letter to the plaintiff acknowledging the receipt of the 2 cheques. On December 6, 1980 the defendants' solicitors stated that the Transfer had been executed by the defendants. However, on February 21, 1981 the defendants wrote to their mortgagee bank to auction the property. This was calculated to deprive the plaintiffs of the property. Counsel on both sides conceded that the property was worth about $1.6 million.

The defendants failed to complete the sale despite repeated notices from the plaintiffs. Proceedings were subsequently commenced for specific performance and for an appropriate abatement of the price in view of the encroachments.

The learned Registrar ordered specific performance and for the abatement of the purchase price by $144,000. The defendants appealed.

Held: (1) the learned Registrar was right in ordering specific performance. The defendants did not, and indeed, on the facts could not show how the decision was erroneous;

(2) the defendants' letter of July 31, 1980 conclusively demonstrated the conclusion of a contract in writing;

(3) an inquiry on the amount of abatement should be conducted by the Registrar.

Cases referred to:-

(1) *Bigg* v. *Boyd* [1971] 1 W.L.R. 913.

(2) *Holwell Securities Ltd.* v. *Hughes* [1973] 2 All E.R. 476.

CIVIL SUIT.

Ng Liang Poh for the appellant.

Tan Geok Ser for the respondent.

Lai Kew Chai J.: This is an appeal by the defendants from an order of the learned Registrar made on May 12, 1981 in which specific performance was ordered under the provision of R.S.C. Order 81, rule 3 and in which the purchase price for the property was abated by $144,000.

After hearing the appeal, I dismissed it with costs and ordered that completion of the sale and purchase shall take place not later than July 21, 1981. But I set aside the Registrar's order of abatement in the sum of $144,000 and, in lieu thereof, I ordered that an inquiry on the amount of the abatement shall be conducted by the Registrar after the encroachments on the property were cleared by the plaintiffs and if the encroachments were not cleared by the defendant on completion of the sale and purchase.

I also refused the defendants' application for a stay of execution. It had no merits. The matter of completion has been delayed long enough. The plaintiffs also had to commence the development of the 8-storey factory to avert the second lapsing of the written planning permission which was issued by the competent authority and re-validated up to October 18, 1982.

Order 81, rule 3 of the Rules of Supreme Court provides: —

> "Unless on the hearing of an application under Rule 1 either the court dismisses the application or the defendant satisfies the court that there is an issue or question in dispute which ought to be tried or that there ought for some other reason to be a trial of the action, the court may give judgment for the plaintiff in the action."

Although a court is given the discretion to order specific performance, it must be borne in mind that the proceedings are summary in nature with the consequence that once the order is made it is final, subject to the usual appeals, and the matter does not go formally to trial. The scope of Order 81 rule 1 is such that it usually involves substantial rights of parties which may have arisen under agreements (whether in writing or not) for dealings in "any property" or in respect of the rescission of such agreements. In that context, rule 1 also covers the forfeiture or return of any deposit made under those agreements.

Seeing the summary nature of the proceedings and the subject matter within the scope of Order 81, it seems to me that an order should be made only if the learned Registrar thinks it is a plain case and ought not therefore be tried: see *Bigg* v. *Boyd*,[1] *per* Russell L.J. at 915 B, C. If it is a matter involving the construction of documents, in which a trial including oral evidence (if any) will not take the matter any further, it seems to me that the Registrar is in as good a position as a trial judge and ought to decide what is in his judgment the true construction. He is able in those circumstances to decide if there is a concluded contract, the essential terms thereof, whether these are evidenced in writing to comply with the Statute of Frauds and whether specific performance ought to be ordered.

In my view, the learned Registrar was right in ordering specific performance. The defendants did not, and indeed, on the facts could not show how the decision was erroneous.

The defendants were the owners of the property known as Lot 441-2 of Mukim XXIV, Singapore ("the property"). The property has an area of 1067.1 square metres. It was also known as No. 90, Lorong 23, Sims Avenue, Singapore. It was slightly encroached upon along the northern and southern boundaries of the property. The property was rectangular in shape. The encroachments did not stand in the way of the erection of the proposed factory on the property.

By an option in writing given on June 10, 1980, the defendants for the sum of $5,000 gave the plaintiffs an option to purchase the property with vacant possession and at the price of $720,000. Completion of the sale and purchase was to take place on November 10, 1980. The option was exercisable at or before 4 p.m. on July 30, 1980. The mode of acceptance was prescribed. The plaintiffs had to sign at the foot of the option at the portion entitled "Acceptance Copy" and deliver it duly signed together with the balance of the 10% of the purchase price at or before the time aforesaid.

The plaintiffs did not exercise the option in the mode prescribed. Instead, they handed to the defendants and the defendants accepted two cheques aggregating the sum of $67,000 which together with the option fee amounted to 10% of the purchase price. Although the plaintiffs did not exercise the option in the manner and within the time prescribed, I am satisfied that the defendants had waived these terms and had in truth and in fact accepted the plaintiffs' belated and altered mode of converting the option into a concluded contract.

This is conclusively evidenced by the letter dated July 31, 1980 and written by the defendants. In view of the defendants' attempt to cast a different interpretation on the effect of this letter it is reproduced in full, without any amendment to the obvious grammatical errors: —

"31st July, 1980

Messrs
KAU NIA ENTERPRISE PTE LTD
No. 478, Serangoon Road
Singapore 0821

Attn: Mr Yeo Chu Teng

Dear Sirs,

Re: The Sale of No. 90, Lorong 23, Sims Avenue

Referring to the above sale, we have receiving from you today two cheques, inclusive:—

1. $5,000/- cash cheque No.
   Bank , and,
2. $62,000/- post-dated cheque No.
   Bank
   Date: 23/8/1980

together with the previous $5,000/- option fee, we have received 10% deposit (S'PORE DOLLARS: $72,000/-) from you.

Since we have confirmed the sale to you, and you have already exercise the said sale, thus, the above post-dated cheque must be able to draw on the stated date, in case any delay, we will charge you interest accordingly.

Yours faithfully
TECK WAH CORPORATION PTE LTD.
Sgd.

Accepted By,
Sgd. (In Chinese)
MR YEO CHU TENG
(CHEE)"

The letter acknowledged the receipt of the two cheques, one of which was for $5,000 and the other for $62,000 which was post-dated to August 23, 1980. It made reference to the option fee. The defendants "confirmed the sale" to the plaintiffs. By saying "you have already exercise the said sale" they meant or must be taken to mean that the plaintiffs had been deemed by the defendants to have duly exercised the option. The letter even went on to provide for interest to be charged if the post-dated cheque was not duly honoured on presentation. The letter was accepted by the plaintiffs.

On September 8, 1980 the plaintiffs requested the defendants to encash the post-dated cheque. The defendants did. Completion of the sale and purchase was delayed. On December 6, 1980 the defendants' solicitors stated that the transfer had been executed by the defendants. They asked for a firm date for the completion.

Up to this stage, it is clear that every act of the defendants was an affirmation that the agreement for sale and purchase was concluded and the actions of the defendants were steps taken by them towards the completion of the sale.

On January 21, 1981 the defendants took an extraordinary step. They wrote to their mortgagee bank to auction the property. It was calculated to deprive the plaintiffs of the property. It was stated by counsel on both sides that the property was by then worth about $1.6 million. The defendants should not be allowed to renege on their contract just because the property market was rising.

The plaintiffs gave notice of completion. The defendants could not give vacant possession of the property. The encroachments mentioned earlier in this judgment were still there. The plaintiffs insisted on completion notwithstanding the encroachments. As evidenced by the letter dated April 3, 1981 and written by the plaintiffs' solicitors, both parties agreed that the plaintiffs would withhold 20% of the purchase price to meet the cost and expense of removing the encroachments. No agreement was reached on the amount of the abatement.

As the defendants failed to complete the sale notwithstanding repeated notices from the plaintiffs, these proceedings were commenced for specific performance and for an appropriate abatement of the price in view of the encroachments.

On behalf of the defendants, it was argued that the option, not having been exercised in the mode and within the time prescribed, had lapsed. It was also argued that the letter of July 31, 1980 was not a sufficient memorandum, as it allegedly did not contain the essential terms. The first contention is not consistent with the plain words and tenor of the defendants' letter of July 31, 1980, the effect of which I had already dealt with. It is so clear and unambiguous. This is one case where happily the contemporaneous documents are such that they conclusively demonstrate the conclusion of a contract in writing. Oral evidence to the contrary, even if admissible, is not even asserted on behalf of the defendants.

The defendants sought to rely on *Holwell Securities Ltd.* v. *Hughes.*[2] It was decided in that case that the mere posting of the notice purporting to exercise the option was contrary to the mode prescribed by agreement and was not a valid exercise of the option. The case is not applicable here. We have a vastly different situation.

Even if the letter of July 31, 1980 was completely unrelated to the option (which is not my finding), it does contain within it sufficient terms to satisfy the requirements of the Statute of Frauds. The defendants also fail on this contention.

For these reasons, I dismissed the appeal and ordered an enquiry on the amount of the abatement of the purchase price.

Appeal dismissed.

Solicitors: *Ng Liang Poh & Co.; Chung & Co.*

In re APPLICATION OF RAMAKRISHNAN CHAKARA PADAYACHI

[O.C.J. (Sinnathuray J.) September 30, 1981]
[Singapore — Originating Motion No. 30 of 1981]

Administrative Law — Mandamus — Employee falling down in course of work — Blood clot arising from head injuries — Report to Commissioner of Labour — Commissioner of view that accident did not arise out of employment — No hearing held — Workmen's Compensation Act, 1975, ss. 24 & 25.

Workmen's Compensation — Injury in the course of work — Commissioner for Labour of view that accident did not arise out of employment — No hearing held — Application for mandamus — Workmen's Compensation Act, 1975, ss. 24 & 25.

In this case the employee in the course of his work as a road sweeper fell near a drain. He was later operated upon for evacuation of blood clots arising from the head injuries. The matter was referred to the Commissioner for Labour, who took the view that the accident did not arise out of the employment. No hearing was held by the Commissioner for Labour. The applicant applied for an order of *mandamus* to direct the Commissioner of Labour to exercise the power conferred on him by the Workmen's Compensation Act, 1975 and to hear and determine the application's claim for compensation under the Act.

Held: In this case the Commissioner for Labour had failed to inquire into the matter and issue an order of assessment under Section 24 of the Workmen's Compensation Act, 1975 and therefore the applicant should be granted the order of *mandamus*.

ORIGINATING MOTION.

Karuppan Chettiar (*H.T. Choo* with him) for the applicant.

S. Tiwari (Deputy Senior State Counsel) for the respondent.

Cur. Adv. Vult.

Sinnathuray J.: This is an application for an order of *mandamus* directing the Commissioner for Labour to exercise the power conferred on him by section 24 of the Workmen's Compensation Act, 1975 (No. 25 of 1975) (the Act) and to hear and determine according to law the applicant's claim for compensation under the Act.

The brief facts are these. On April 4, 1980, in the morning, the applicant, an employee of the Ministry of the Environment, in the course of his work as a road sweeper fell near a drain at Finger Pier along Prince Edward Road. He was comatosed on admission into hospital. There he was operated upon for the evacuation of blood clots arising from head injuries. He eventually recovered and was discharged from hospital on September 20, 1980.

On October 8, 1980, the applicant was interviewed by an Assistant Public Health Inspector of the Ministry of the Environment. He told the interviewing officer that whilst he was sweeping the road in front of the Finger Pier Building he suddenly felt giddy and had a black-out. The next thing he knew was that he was in hospital.

On September 16, 1980 the solicitors for the applicant wrote to the Ministry of the Environment to inquire whether the accident had been reported to the Commissioner for Labour (the Commissioner). The Ministry had in fact soon after the accident on April 11, 1980 referred the matter to the Commissioner. From letters exhibited in the affidavits in these proceedings it appears that the Commissioner, having entered into correspondence with the hospital authorities, on February 17, 1981 wrote a letter to the solicitors for the applicant, the relevant part of which reads as follows:

> "Basing on the statement recorded from your clients, we are of the view that this accident did not arise out of his employment. As such, the case does not fall within the ambit of the Workmen's Compensation Act, 1975, and therefore no inquiry will be held."

The issue is whether this letter can be considered to be a decision of the Commissioner under the Act. For the applicant it is contended that it is not a decision from which the applicant can appeal to the High Court under the Act.

As I have understood the submission for the Commissioner it is that the conditions requisite for the operation of section 24(1) of the Act have not arisen; that in the circumstances there was nothing for the Commissioner to do; and therefore this court should not make an order of *mandamus* against the Commissioner. With respect, I cannot accede to that submission.

The power vested in the Commissioner to hear the claim made by the applicant is under section 24 of the Act. His power is to assess the compensation payable to the applicant. It is of course that under section 3 of the Act compensation will only be payable to the applicant if the injury suffered by the applicant arose out of and in the course of his employment.

How section 24 operates is provided for in the Workmen's Compensation Regulations, 1975 (the Regulations). The first step is that notice of an accident shall be given to the Commissioner by the employer as required under section 12 of the Act. It was done in this case. Then, notwithstanding section 11 of the Act which deals with the requirements of notice of accident and of claim to be given by the person making the claim, the Regulations require the Commissioner to take action as provided therein. The next step is that under rule 5 there has to be a written statement from the applicant. From the portion of the letter I have referred to, it is that the Commissioner acted on the applicant's statement recorded by the Assistant Public Health Inspector. No criticism can be made as regards this matter as in my judgment the Commissioner was entitled to rely on the statement, so that rule 5 of the Regulations has been complied with.